IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

WP(C).No. 3813 of 2005(D)

CMA.137/2004 of V ADDL. DISTRICT COURT, ERNAKULAM

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PETITIONER:

DIVYA FUELS, CHOTTANIKKARA,
KUREEKADU VILLAGE, KANAYANNUR TALUK,
REPRESENTED BY ITS PROPRIETOR, P.M.MANOJ.

BY ADV. SRI.K.RAMACHANDRAN
SRI.C. DEVANAND
SRI.SUNU P.JOHN

RESPONDENTS:

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1. P.M.VELAYUDHAN, AGED 49,
S/O. LATE VALLAKKELY, PONNATHUPADOM HOUSE,
VENGOLA KARA, SOUTH VAZHAKKULAM ARAKKAPADY VILLAGE
KUNNATHUNADU TALUK.

2. INDIAN OIL CORPORATION,
KOCHI DIVISIONAL OFFICE, PANAMPILLY AVENUE,
PANAMPILLY NAGAR, KOCHI-36, REPRESENTED BY
ITS GENERAL MANAGER.

R2 BY ADV. SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SMT.PRIYA MAHESH
SMT.PRIYA MANJOORAN
R1 BY ADV.SRI.T.B.THANKAPPAN
SMT.ALICE THOMAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC NO.3813/05)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF ORDER IN I.A.NO.8905/04 OF THE MUNSIFF COURT, ERNAKULAM.

EXT.P2: TRUE COPY OF JUDGMENT IN CMA NO.137/04 OF THE VTH ADDL. DISTRICT COURT, ERNAKULAM.

EXT.P3: TRUE COPY OF INJUNCTION PETITION IN I.A.8905/04 IN O.S.NO.1598/04 OF THE MUNSIFF COURT, ERNAKULAM.

EXT.P4: TRUE COPY OF COUNTER IN I.A.NO.8905/04 IN O.S.NO.1598/04 OF THE MUNSIFF COURT, ERNAKULAM.

EXT.P5: TRUE COPY OF REPLICATION IN I.A.NO.8905/04 IN O.S.NO.1598/04 OF THE MUNSIFF COURT, ERNAKULAM.

PIUS C. KURIAKOSE,J.

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W.P.(C) No.3813 of 2005

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Dated: 1st June, 2007

JUDGMENT

I am unable to agree with Mr.K.Ramachandran, learned counsel for the petitioner when he submits that Ext.P2 judgment of the learned District Judge allowing C.M.A.No.137 of 2004 preferred by the respondent in part vacating the order of injunction passed by the learned Munsiff and restraining the 1st respondent from removing the articles/properties from the petition schedule premises warrants correction under the supervisory under Article 227 which is visitorial in nature and is expected to be invoked only in exceptional circumstances. It cannot be stated that the order is so wholly unreasonable, perverse or that it is in gross violation of law. But at the same time I find some merit in the submission of Mr.Ramachandran that the learned District Judge having noticed twice that the counsel for the appellant made a submission that the appellant will not cause any obstruction in the matter of running of the business, was not justified in not passing an order fully in terms of that submission. In this court also Mr.T.B.Thankappan, learned counsel for the 1st respondent reiterated the submission that the 1st respondent has no intention to obstruct the running of the petrol

bunk. According to him, what is necessary is to protect the apparent interest which the first respondent has over the subject petrol pump in view of Ext.P1.

2. Having considered the rival submissions, I do not find warrant for disturbing the findings/impressions of the learned District Judge. However, even as I confirm Ext.P2 judgment, there will be an order that Ext.P2 will be modified to the limited extent of directing the 1st respondent further not to cause obstructions in the matter of running of the petrol bunk in question. The learned Munsiff will expedite the trial of the suit and special list the same in the earliest available special list and dispose of the suit in any event within three months of receiving copy of this judgment. The learned Munsiff will not be unduly influenced by Ext.P2 judgment or his own findings in Ext.P1 order while deciding the issues in the suit and will treat the findings in Ext.P2 judgment as provisional.

The Writ Petition is disposed of as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**